

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWIN L. BRUMLEY)

Appearances:

For Appellant: James H. Kindel, Jr., Attorney at Law

For Respondent; Burl D. Lack, Chief Counsel;
John S. Warren, Assistant Counsel

OPINION

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Edwin L. Brumley against a proposed assessment of additional personal income tax in the amount of \$10,653.99 for the year 1949.

Appellant was for a number of years prior to and during 1949 an officer and one of the principal owners of two California corporations, Brumley-Donaldson Company and West Coast Foundry Equipment Company. Prior to and during 1949 he and his wife were the owners of an avocado ranch in California, Appellant also had oil interests here. He owned a house in La Habra, California, where his wife, his daughter and his mother lived prior to and during 1949,

As early as 1942 Appellant commenced negotiations for a sales brokerage contract with the Lone Star Steel Company of Texas, He spent some time in Daingerfield, Texas, in 1945 and 1946 in connection with the operations of the company, He left California for New York in February of 1947 to complete negotiations for the contract.

On May 24, 1947, Appellant entered into a contract with the company under which he became the sales broker for its products. The contract was to run for three years with automatic renewal for another three years unless six months' notice was given by either party. The contract stated in part that "This agreement ... may be assi ned ... to a corporation which may be organized by [Appellant] under the laws of the State of Texas. It is understood by the parties, however, that in making this agreement it has been the intention to contract for the personal supervision of [Appellant]." Appellant formed a corporation named the E, L, Brumley Sales

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Company and transferred the contract to that corporation on February 1, 1948.

Appellant spent most of the time from February through March of 1947 in New York negotiating the contract with the steel company representatives there. He also made a number of trips to Washington, D. C., and to Texas in these months. During April and June of that year he spent most of his time in Washington, D. C., since sales of the steel products to which the brokerage contract related had to be approved by various government agencies there. Trips were made by him to New York, Texas, Illinois and California in this period. He spent the remainder of 1947 primarily in Texas at various temporary quarters.

In late 1947, he built and furnished a house in Daingerfield, Texas, near the plant of the Lone Star Steel Company. This house was transferred to the E. L. Brumley Sales Company on February 1, 1948, and thereafter was listed as a "guest house" of the corporation, which took a depreciation deduction for it on its 1948 Federal income tax return. Appellant stayed at this house and also at hotels and apartments in Dallas. He registered as an elector and voted in Texas in 1948. During that year he made trips to Washington, D. C., New York and California,

In May of 1948 a dispute arose over the sales brokerage contract with the steel company and the contract was amended on September 28, 1948. By December, 1948, the amended contract was in dispute. Appellant was with his family in California from December 22 to December 29, 1948. He returned to Texas for a week or two and then went to Washington, D. C. He was there notified that his mother, who had been seriously ill for some time, was becoming worse, and he returned to California for a few days. In February, 1949, he again went to California to see his mother, who died shortly before his arrival. He returned to Texas and on February 17, 1949, the parties agreed to a termination of the contract. Thereupon, E. L. Brumley Sales Company sold its assets to the Lone Star Company and dissolved on March 31, 1949. Appellant realized a capital gain of approximately \$400,000 on the liquidation. He returned to California in April of 1949.

Appellant filed resident personal income tax returns with the Franchise Tax Board for 1947 and 1948 in which he affirmatively stated that he was a resident of California. For the year 1949 he filed a return in which he claimed that he was a resident of Texas at the time of realizing the capital gain described above. He now contends that he became domiciled in Texas in 1947 and did not re-acquire his status as a California domiciliary until mid-April of 1949. He has

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submitted affidavits of two persons acquainted with him during his activities in Texas, which state in substance that he indicated an intent to remain permanently in Texas in connection with his business there. If Appellant was not a resident of California, his gain upon the liquidation referred to above is not taxable here.

For the period in question, Section 17013 of the Revenue and Taxation Code provided:

"Resident includes:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled within this State who is in some other state, territory, or country for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State."

In order to prevail, Appellant must establish that he was no longer domiciled in California or, if his domicile remained here, that he was in some other state for other than a temporary or transitory purpose. Since we are convinced that Appellant was in Texas during the period in question for other than a temporary or transitory purpose, we have found it unnecessary to consider the question of his domicile.

Based upon the facts before us, it appears that the performance of the sales brokerage contract with the Lone Star Steel Company required Appellant to be in Texas for a long and indefinite period. Between the time he signed the agreement in May, 1947, and his return to California in April, 1949, Appellant centered his activities and spent substantially all of his time in Texas. His absences from that state during this interval were sporadic and brief, consisting of business trips to other states and visits with his family in California. The continued presence of his family in California was due to the serious illness of his mother, which culminated in her death in February 1949.

In the light of these facts, neither the filing of resident personal income tax returns for 1947 and 1948 nor the maintenance of a home in this State for the occupancy of his family constitutes persuasive evidence that Appellant was in Texas for only a temporary purpose. It is alleged

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by the Franchise Tax Board, however, that by late 1948 Appellant knew that his brokerage contract with the steel company might soon be terminated. It argues that because of this alleged knowledge the Appellant's presence in Texas thereafter was temporary and transitory in nature. "regardless of the nature of the purpose for his presence during 1948."

This contention is untenable on its face. Appellant was in Texas to fulfill a contract extending over a long and, because of the provision for a renewal, indefinite time. The nature of his stay did not change as the end of the period covered by the contract drew near. That the contract was terminated by agreement rather than by expiration under its original terms is of no significance. Until he returned here to stay in April, 1949, Appellant was not, in our opinion, a resident of California.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Edwin L. Brumley to a proposed assessment of additional personal income tax in the amount of \$10,653.99 for the year 1949, be and the same is hereby reversed,

Done at Sacramento, California, this 16th day of December, 1958, by the State Board of Equalization.

George R. Reilly, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

Robert E. McDavid, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary